

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	DECISION
In the Matter of Protest of:)	
)	CASE No. 2009-128
)	
Diamond Pharmacy Services)	
)	
)	
Materials Management Office)	POSTING DATE:
IFB No. 5400000884)	
Pharmaceutical Services for the)	
<u>Department of Juvenile Justice</u>)	August 21, 2009

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Diamond Pharmacy Services (Diamond). With this invitation for bids (IFB), the Materials Management Office (MMO) attempts to procure pharmaceutical services for the South Carolina Department of Juvenile Justice (SCDJJ). In the letter, Diamond protested MMO's intent to award to Palmetto LTC Pharmacy alleging, "the Diamond Pharmacy proposal contained superior services and a lower cost overall for the South Carolina Department of Juvenile Justice."

As the legal issues to be decided are clear, this decision is prepared without the benefit of a hearing.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On April 13, 2009, MMO issued the solicitation.
2. On April 29, 20009, MMO issued Amendment #1.

3. On May 13, 2009, MMO opened the bids received, as follows:

<u>Bidder</u>	<u>Bid Amount</u>
Diamond	\$353,935.82
Palmetto Pong Term Care Pharmacy	416,956.00
Choicecare Pharmacy	430,700.50
National Direct Home Pharmacy	431,312.26
Preferred Care Pharmaceutical	464,322.50
NCS Homecare of SC	484,928.00

4. On June 10, 2009, after rejecting Diamond's bid as nonresponsive, MMO posted an intent to award to Palmetto Long Term Care Pharmacy.

5. On June 11, 2009, the CPO received Diamond's protest.

CONCLUSIONS OF LAW

Regarding award of an IFB, the Consolidated Procurement Code (Code) reads, "notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice at a location specified in the invitation for bids." [11-35-1520(10)] [Emphasis added] Although Diamond bid a price lower than Palmetto LTC Pharmacy, MMO rejected Diamond's bid as nonresponsive. In a written determination dated June 10, 2009, Kimber Craig, MMO Procurement Manager, wrote, "The bid schedule submitted by Diamond Pharmacy Services states "Pricing based on published Medispan rate as of May 11, 2009. Prices subject to change as Medispan rates change." [Copy of excerpt from Diamonds bid attached] "This statement qualified Diamond's offer and made the price subject to "price in effect at time of delivery. Therefore, the bid is found to be nonresponsive."

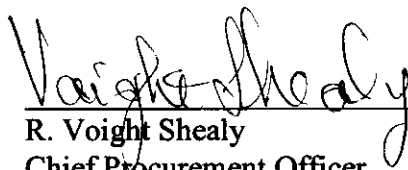
A review of Diamond's bid reveals that Diamond did indeed qualify its price items 4 - 41, which MMO identified in the IFB as "the most commonly used medications. They comprise 80% of the orders." [IFB, p. 31]

Regarding award, the IFB reads, "Award will be made to the lowest responsible and responsive bidder(s). [06-6020-1]" [IFB, p. 19, Award Criteria] Regarding bid prices, the IFB reads: "Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms." [IFB, p. 21, Fixed Price Required] Diamond's qualification of its prices for drugs identified in the IFB as 80% of the medications utilized by SCDJJ violated the requirement of the IFB that bidders offer prices that "include all costs for performing the work."

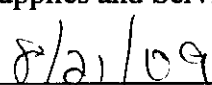
The Code defines a responsive bidder as, "a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals." [11-35-1410(7)] Diamond did not offer a fixed price for the services being procured. Consequently, Diamond's bid was nonresponsive. To consider Diamond for award would be in violation of South Carolina law.

DETERMINATION

For the aforementioned reasons, the protest of Diamond is denied.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services



Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

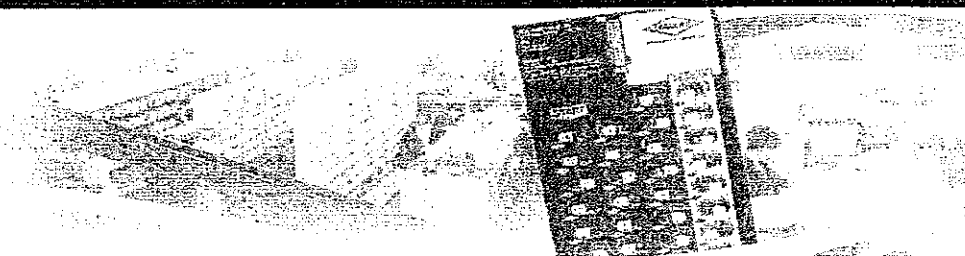
(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2009-2010 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 23, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



June 11, 2009

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Juvenile Pharmacy Services IFB

To Whom It May Concern:

Diamond Pharmacy Services hereby submits its Notice of Intent to Protest the contract award of Solicitation # 5400000884 for Pharmacy Services to Palmetto LTC Pharmacy.

Based upon the information provided, the Diamond Pharmacy proposal contained superior services and a lower cost overall to the South Carolina Department of Juvenile Justice.

After reviewing the published pricing from Palmetto and comparing to the pricing that Diamond submitted, our pricing was significantly lower than Palmetto LTC pharmacy.

Please note the following pricing differences between Diamond and Palmetto:

	Diamond Pharmacy	Palmetto
Medication Prices on List	\$339,486.69	\$399,306.00
Consultation Services	\$6,750.00	\$8,100.00
Chart Services	\$ 0	\$4,050.00
Pharmacy Services	<u>\$7,700.00</u>	<u>\$5,500.00</u>
Total	\$353,936.69	\$416,956.00

Based upon the submitted figures in the IFB, selecting Diamond Pharmacy instead of Palmetto will save the Department over \$63,000.00 annually. The savings equates to over 15% and only represents the savings on the more frequently prescribed medications. We respectfully protest the anticipated award to Palmetto LTC pharmacy and request that the award of the contract be delayed until the figures submitted can be reviewed in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Walt McCulloch", written over a horizontal line.

Walt McCulloch
Director of Business Development
Diamond Pharmacy Services
645 Kolter Drive
Indiana, PA 15701
800.882.6337 x 4261
wmcculloch@diamondpharmacy.com



VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

BIDDING SCHEDULE (NOV 2007)

Item	Quantity	Unit of Measure	Unit Price	Extended Price
1	12.000	Months	\$1.25	\$6,750.00
Product Catg.: 94872 - Pharmaceutical Services				
Item Description: Consultation Services – This is a flat fee per month based on 450 patients.				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
2	12.000	Months	\$0.00	\$0.00
Product Catg.: 94872 - Pharmaceutical Services				
Item Description: Chart Services – This is a flat fee per month based on 450 patients.				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
3	2000.000	each	\$3.85	\$7,700.00
Product Catg.: 94872 - Pharmaceutical Services				
Item Description: Pharmacy Services – This is the fee for dispensing services. The fee is per prescription filled. The estimated monthly volume is 2000 RX/month.				

ITEMS 4 – 41 are the most commonly used medications. They comprise 80% of orders. The quantities listed are the annual volume from 2008.

Pricing based on published Medispan rate as of May 11, 2009. Prices subject to change as Medispan rates change.

Item	Quantity	Unit of Measure	Unit Price	Extended Price
4	21000.000	each	0.0639	\$1,341.65
Product Catg.: 96264 - Packaging & Wrapping (Incl. Shrink Wrapping)				
Item Description: Hydroxyzine Pamoate 25mg capsule				
Tendering Text: If generic version is available, please list the generic version: <u>00555-0323-04</u>				